

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**FEBRUARY 26, 2001**

**IN RE:**

<b>APPLICATION OF MEMPHIS NETWORKX, LLC,</b>	)	
<b>FOR A CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY TO PROVIDE</b>	)	
<b>INTRASTATE TELECOMMUNICATION</b>	)	
<b>SERVICES AND JOINT PETITION OF MEMPHIS</b>	)	<b>DOCKET NO. 99-00909</b>
<b>LIGHT GAS &amp; WATER DIVISION, A DIVISION</b>	)	
<b>OF THE CITY OF MEMPHIS, TENNESSEE</b>	)	
<b>("MLGW") AND A&amp;L NETWORKS-TENNESSEE,</b>	)	
<b>LLC ("A&amp;L"), FOR APPROVAL OF AGREEMENT</b>	)	
<b>BETWEEN MLGW AND A&amp;L REGARDING JOINT</b>	)	
<b>OWNERSHIP OF MEMPHIS NETWORKX, LLC.</b>	)	

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**ORDER SUSPENDING DEPOSITIONS SCHEDULED FOR  
FEBRUARY 28, 2001, HOLDING APPLICANT'S AND  
JOINT PETITIONERS' MOTION TO QUASH IN ABEYANCE  
AND SETTING PRE-HEARING CONFERENCE FOR MARCH 6, 2001**

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This matter is before the Pre-Hearing Officer, on remand from the Directors of the Tennessee Regulatory Authority ("Authority"), for the purposes of establishing a pre-hearing schedule and ruling on all preliminary matters in light of the filing of the *Amendment to the Application of Memphis Networkx, LLC and Joint Petition of MLGW and A&L* ("*Amended Application*"). On January 29, 2001, a Pre-Hearing Conference was held during which the Pre-Hearing Officer established a schedule for filings and discovery. Actions taken at the Pre-Hearing Conference are reflected in the Pre-Hearing Officer's Order of February 9, 2001.<sup>1</sup> The Pre-Hearing Officer determined that additional discovery would be necessary "but limited the scope of such discovery to the new issues raised by

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<sup>1</sup> See *Order Granting IBEW's Motion to Withdraw, Establishing Procedural Schedule, and Setting Hearing Date* (February 9, 2001), pp. 6-8.

the Amended Application and in the pre-filed testimony submitted therewith.”<sup>2</sup> The procedural schedule called for the completion of all discovery and the submission of pre-filed rebuttal testimony by Time Warner Communications of the Mid-South, L.P. and Time Warner Telecom of the Mid-South, L.P. (collectively “Time Warner”) and Tennessee Cable Telecommunications Association (“TCTA”) no later than March 1, 2001.

On February 12, 2001, Memphis Networx, LLC (“Applicant”) and Memphis Light Gas & Water, a division of the city of Memphis, Tennessee and Memphis Broadband, LLC (collectively “Joint Petitioners”) filed the *Applicant and Joint Petitioners’ Objections and Initial Responses to the Data Requests of the Tennessee Cable Telecommunications Association, Time Warner Communications, and Time Warner Telecom of the Mid-South, L.P.* Thereafter, Time Warner and the TCTA filed a *Motion to Compel Responses to Data Requests Submitted by Tennessee Cable Telecommunications Association and Time Warner Telecom, Inc.* on February 15, 2001. On February 16, 2001, the Pre-Hearing Officer issued an Order,<sup>3</sup> requiring the parties to supplement the objections and motion to compel with more detail and to submit those supplemental filings no later than February 21, 2001. The parties submitted those filings pursuant to the Order on February 21, 2001.

On Friday, February 23, 2001, the Time Warner and the TCTA requested the issuance of subpoenas duces tecum for depositions of Ward Huddleston, Larry Thompson, Andrew P. Seamons, and Alex Lowe to take place on February 28, 2001. The subpoenas duces tecum were issued by the Pre-Hearing Officer pursuant to the ruling at the January 29, 2001 Pre-Hearing Conference that depositions would be permitted as a part of discovery. It was made clear to the parties at the Pre-Hearing Conference and in the Pre-

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<sup>2</sup> *Id.* at 6.

<sup>3</sup> See *Order Directing Supplemental Filings* (February 16, 2001).

Hearing Officer's Order of February 9, 2001 that "[a]ny party may file a timely motion with the Pre-Hearing Officer concerning the taking of depositions."<sup>4</sup> On Monday, February 26, 2001, the Applicant and Joint Petitioners filed a motion to quash the depositions requested by Time Warner and the TCTA.<sup>5</sup> Among the objections raised by the Applicant and Joint Petitioners is the assertion that the depositions requested for February 28, 2001 are in violation of the Tennessee Rules of Civil Procedure because Time Warner and the TCTA provided the deponents and their counsel with less than the requisite seven (7) days notice for depositions being taken out of the county where the suit is pending.<sup>6</sup> The Applicant and Joint Petitioners also state that counsel for Memphis Light Gas & Water and Memphis Networkx is not available for depositions on February 28, 2001.

Having reviewed the Motion to Quash and Affidavit filed in support thereof, the Pre-Hearing Officer finds that, under the circumstances, in the absence of an agreement between the parties establishing the date of the depositions, an undue hardship and burden would be placed on the Applicant and Joint Petitioners if the depositions were to proceed on February 28, 2001. Further, it is not in the best interests of all parties for the depositions to proceed until there is a determination of the objections raised by the Applicant and Joint Petitioners to the scope of the depositions and production requested therewith.

Based upon the foregoing and without ruling on the merits of the objections raised by the Applicant and Joint Petitioners, the Pre-Hearing Officer determines that the depositions scheduled for February 28, 2001 be cancelled. The Pre-Hearing Officer holds

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<sup>4</sup> *Order Granting IBEW's Motion to Withdraw, Establishing Procedural Schedule, and Setting Hearing Date* (February 9, 2001), p. 6.

<sup>5</sup> *See Applicant's and Joint Petitioners' Motion to Quash Subpoenas Duces Tecum of Andrew P. Seamons, Larry Thompson, Alex Lowe, and Ward Huddleston and Motion for Order that Discovery Depositions Not Be Had and Objections to Taking Depositions Due to Errors and Irregularities*, (February 26, 2001) (hereinafter, referred to as Motion to Quash.)

<sup>6</sup> Motion to Quash, pp. 5-6 (relying on Rules 6 and 30.02(1) of the Tennessee Rule of Civil Procedure).

the Motion to Quash in abeyance until a determination has been made regarding the Objections to Discovery filed by the Applicant and Joint Petitioners and the Motion to Compel filed by Time Warner and the TCTA. The Pre-Hearing Officer will consider the Objections and Motion to Compel during a Pre-Hearing Conference hereby scheduled for **2:30 p.m. on Tuesday, March 6, 2001**. The Pre-Hearing Officer will also consider the Motion to Quash at the Pre-Hearing Conference and until that time the Motion to Quash is hereby held in abeyance. With the exception of the dates for the completion of discovery and the submission of pre-filed testimony, all other dates in the procedural schedule as set forth in the Pre-Hearing Officer's Order of February 9, 2001 shall remain in full force and effect. The Hearing date of March 26, 2001 shall not be affected by the actions of the Pre-Hearing Officer in this Order.

**IT IS THEREFORE ORDERED THAT:**

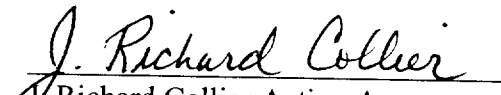
1) The depositions of Ward Huddleston, Larry Thompson, Andrew P. Seamons and Alex Lowe shall not take place on February 28, 2001. The Applicant's and Joint Petitioners' Motion to Quash is hereby held in abeyance.

2) A Pre-Hearing Conference shall be held on **Tuesday, March 6, 2001**, at **2:30 p.m.**, at which time the Pre-Hearing Officer will consider the merits of: (a) *Applicant and Joint Petitioners' Objections and Initial Responses to the Data Requests of the Tennessee Cable Telecommunications Association, Time Warner Communications, and Time Warner Telecom of the Mid-South, L.P.*; (b) *Motion to Compel Responses to Data Requests Submitted by Tennessee Cable Telecommunications Association and Time Warner Telecom, Inc.*; and (c) *Applicant's and Joint Petitioners' Motion to Quash Subpoenas Duces Tecum of Andrew P. Seamons, Larry Thompson, Alex Lowe, and Ward*

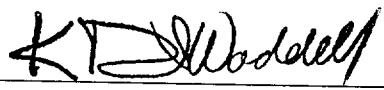
*Huddleston and Motion for Order that Discovery Depositions Not Be Had and Objections to Taking Depositions Due to Errors and Irregularities.* The Pre-Hearing Officer will receive no further filings as to the Objections to Discovery filed by the Applicant and Joint Petitioners or the Motion to Compel, however, should Time Warner and the TCTA desire to file a response to the Motion to Quash, they must do so no later than **2:00 p.m.** on **Friday, March 2, 2001.**

3) The setting of this Pre-Hearing Conference and the Pre-Hearing Officer's consideration of the pending objections and motions shall not affect the procedural schedule for filings, with the exception of the March 1, 2001 deadline for the completion of discovery and the submission of pre-filed rebuttal testimony.

4) The date of March 26, 2001 for the commencement of the Hearing in this matter shall not be affected by the Pre-Hearing Officer's actions in this Order.

  
J. Richard Collier Acting As  
Pre-Hearing Officer

ATTEST:

  
K. David Waddell, Executive Secretary